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February 1, 2013

Honorable Carol E. Jackson  
United States District Judge  
United States District Court  
Eastern District of Missouri  
Thomas F. Eagleton U.S. Courthouse  
111 South Tenth Street  
St. Louis, MO 63102

Re: *In re BankAmerica Corp. Securities Litigation*, MDL No. 1264

Dear Judge Jackson:

As counsel for the NationsBank lead plaintiffs and as liaison counsel on behalf of the BankAmerica lead plaintiffs, we have prepared this bi-monthly report as directed in Judge Nangle's Order dated August 18, 2004. The following amounts are counsel's best estimates as of the date of this letter based on information received from the Claims Administrator.

**NationsBank Class**

Amount mailed to shareholders on July 16, 2004:	\$275,770,689.41
Amount returned or added due to:	
a. inability to locate recipient:	
i. report of death from locator service:	\$ 10,824.97
ii. locator service unsuccessful in locating:	\$ 6,806.31
b. duplicate payments:	\$ 17,713,415.87
c. Lagerveld recovery (including interest)	\$ 437,690.23
U.S. Bank interest earned since July 16, 2004:	\$ <u>1,667,976.12</u>
	\$ 19,836,713.50
Bank of America Trust Department claims paid:	\$ (9,535,704.51)
Walter A. DeRoeck, <i>et al.</i> , claim paid:	\$ (578,654.64)
Adjustments to amounts paid:	\$ (1,078,228.66)
U.S. Bank charges and fees:	\$ (314,682.55)

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Checks in process with bank	\$ -0-
Thompson/Mills/Owen (October 4, 2006 Order)	\$ (101,010.14)
Reissued Checks:	\$ (990,644.11)
Final Distribution ("FD") \$4,750,000.00	
FD Reissues Prev. Distr. \$ 4,748.13	
FD Outstanding checks \$ -	
FD Voided after 90 days \$ <u>(292,417.07)</u>	
Final Distribution – Cashed Checks	\$ (4,462,331.06)
Administrator fees and costs and adjustment:	\$ <u>(336,611.41)</u>
	\$ (17,397,867.08)
Surplus as of November 30, 2012 <sup>1</sup>	\$ 2,439,443.92
Restitution received in <i>U.S. v. Penta</i>	\$ <u>295,290.27</u>
<b>Total Surplus</b>	<b>\$ 2,734,136.69</b>

**BankAmerica Class**

Amount mailed to shareholders on July 16, 2004:	\$ 129,135,836.30
Amount returned or added due to:	
a. inability to locate recipient:	
i. report of death from locator service:	\$ 1,057.70
ii. locator service unsuccessful in locating:	\$ 4,764.82
b. duplicate payments:	\$ 14,334,166.87
Amount withheld for Administrator expenses (estimate):	\$ 156,095.90
Interest earned since distribution:	\$ <u>954,708.82</u>
	\$ 15,450,794.11
Bank of America Trust Department claims paid:	\$ (1,754,027.48)
Adjustments to amounts paid:	\$ (377,585.38)
Bank charges and fees:	\$ (12,686.13)
Checks in process:	\$ -0-
Thompson/Mills/Owen (October 4, 2006 Order):	\$ (632.89)
Reissued Checks:	\$ (55,865.83)
Final Distribution ("FD") \$ 1,750,000.00	
FD Reissues Prev. Distr. \$ 646.48	
FD Outstanding Checks \$ -	

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<sup>1</sup> This surplus does not include the \$5,879,073.36 sought from the Claims Administrator in Class Representative David Oetting's Complaint discussed *infra*.

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FD Voided after 90 days	\$ <u>(44,293.28)</u>	
Final Distribution – Cashed Checks		\$ (1,706,353.20)
Administrator expenses:		\$ (167,455.00)
Second Distribution:		\$ <u>(10,000,000.00)</u>
		\$ (14,074,605.91)
 <b>Surplus as of November 30, 2012</b>		 <b>\$ 1,376,188.20</b>

### Final Distributions

The Court entered an Order on April 15, 2009 lifting the stay previously imposed on August 6, 2008 and directed the Claims Administrator to distribute surplus funds as directed in the Court's Order entered June 16, 2008 [Doc. 694]. The Claims Administrator advises that this distribution has gone out and the ninety day check cashing deadline has passed.

### U.S. Attorney's Office

The U.S. Attorney's investigation of a scheme to defraud several class action settlements by filing false claims, including in the *BankAmerica* case, about which we previously informed the Court, has essentially concluded. In its Order entered April 15, 2009 [Doc. 717], the Court found the circumstances which warranted the stay of distribution, imposed after disclosure of the U.S. Attorney's investigation, have passed.

As detailed in the enclosed letter from its counsel, the Claims Administrator has received restitution funds from the investigation and criminal prosecutions. As noted above, and consistent with the terms of the enclosed letter, it was confirmed today that the NationsBank Class has received its *pro rata* share of those funds.

Receipt of these funds signals the conclusion of the *Penta* matter insofar as the NationsBank Class is concerned save for perhaps some "continuing small, periodic payments into the restitution fund from the criminal defendants" as noted by counsel for the Claims Administrator.

### Claims Against the Claims Administrator

The Court on November 5, 2010 [Doc. 763] denied the NationsBank Class's Motion to file a supplemental complaint and granted relief sought by the Claims Administrator. The NationsBank Class is evaluating possible alternatives to pursuing or resolving the claims set forth in its proposed supplemental complaint and to that end has been in discussions with counsel for the Claims Administrator. On January 10, 2011, the

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Claims Administrator sent Lead Counsel a settlement proposal consisting of the following material terms: (1) Claims Administrator would waive its outstanding fees for previous work performed in the case in the amount of \$27,874.80; and (2) Claims Administrator would distribute, free of charge, the remaining Settlement Fund in the amount of \$2,445,248.07, for which the administration fee is estimated to be \$27,000. The Claims Administrator estimates that distribution of the remaining Settlement Fund to class members, rather than to a *cy pres* recipient, would account for approximately 42% of the fraud loss.

On February 8, 2011, David P. Oetting, lead plaintiff of the NationsBank Class, filed a lawsuit in the United States District Court for the Eastern District of Missouri against the Claims Administrator on behalf of himself and on behalf of the NationsBank Class, without consulting Lead Counsel. On or about July 26, 2011, Mr. Oetting's case was transferred to the United States District Court for the Eastern District of Pennsylvania.

### **Pending Motions**

On September 21, 2012, lead counsel for the NationsBank Classes and liaison counsel for all classes filed a motion to terminate their case, pay attorney's fees for post-settlement work in the case, and pay at surplus settlement through a *cy pres*.

On October 1, 2012, the Claims Administrator filed its motion to intervene and its opposition papers to the above motion to terminate.


On October 23, 2012, NationsBank Classes Lead Plaintiff and Class Representative, David Oetting, also filed opposition papers to the above-motion to terminate. Replies to the opposition papers have been prepared and filed.

### **Additional Matters**

Lead counsel has received but not paid the Claims Administrator's last invoice dated October 30, 2009 for payment. As liaison counsel, and in light of the above-referenced claims, we intend to treat these monies as a potential set-off and set aside paying the invoice pending resolution of the NationsBank Classes' claims against the Claims Administrator.

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Sincerely yours,



Jonathan F. Andres

Enclosure

cc: Stephen T. Rodd, Esq. (via fax with enclosure)  
Michael E. Hamer (via fax with enclosure)  
Martin M. Green, Esq.  
Joe D. Jacobson, Esq.  
David P. Oetting, Esq. (via fax with enclosure)



Patricia M. Hamill  
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January 9, 2013

Jonathan Andres  
Counsel for the NationsBank Class  
Green Jacobson, P.C.  
Suite 700, Pierre Laclède Center  
7733 Forsyth Boulevard  
St. Louis (Clayton), MO 63105

Rochelle Feder Hansen  
Counsel for the Cendant Class  
Bernstein Litowitz Berger & Grossmann LLP  
1285 Avenue of the Americas  
New York, NY 10019

RE: Heffler Radetich & Saitta, LLP -  
Distribution of Restitution Funds

Dear Counsel:

I am writing in follow up to recent calls I have had with you so that I can memorialize all parties' understandings with regard to the restitution funds Heffler Radetich & Saitta has been receiving as a result of the criminal judgments regarding Kevin Waltzer, former Heffler employee Christian Penta, and several other individuals. Heffler has been holding these funds in an escrow account ("the restitution fund") pending distribution to the parties directly harmed by the crimes – those members of the class actions whose settlement funds were defrauded by the criminal defendants.

As of December 31, 2012, the amount of money in the restitution fund totaled \$1,735,980.44. Although we anticipate continuing small, periodic payments into the restitution fund from the criminal defendants, given your requests, as class counsel for the Cendant and NationsBank classes, for a transfer of the funds to date, Heffler will make a transfer at this time of what has been paid into the restitution fund. As we have

discussed, Heffler will distribute the restitution funds on a pro rata basis as between the two classes according to the proportional losses suffered by each group.<sup>1</sup>

Our records indicate that the total amount lost by the Cendant Class was \$28,691,193.84. The total amount lost by the NationsBank Class was \$5,879,073.36. Given the ratio of these two loss totals, we plan to transfer 82.99% (\$1,440,690.17) of the restitution funds to the Cendant Class, and 17.01% (\$295,290.27) to the NationsBank Class.

We or Heffler will be in touch regarding the logistics of these transfers. Going forward, Heffler will continue to maintain the restitution fund and will to keep you apprised periodically of the amount in the fund.

Please let me know if you have any questions.

Sincerely yours,



Patricia M. Hamill

PMH/lrs

cc: Hilton Tomlinson, Esquire  
George Saitta, CPA

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<sup>1</sup> As you know, there was a third, affected class action -- *In re Nasdaq Market-Makers Antitrust Litigation* -- but the final distributions had been made in that case prior to the discovery of the fraud, and no claim was ever made by that class to receive any recompense from any source for the losses suffered.